

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 948 - SB 1281

April 12, 2021

SUMMARY OF ORIGINAL BILL: Extends, from 15 to 30 days, the period of time within which a party or any member of the Health Services and Development Agency (HSDA) may file a notice to request the agency review an action by the executive director.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (006740): Deletes all language after the enacting clause. Makes various changes to the certificate of need (CON) process for healthcare facilities and services.

Requires the HSDA to develop criteria and standards to guide the agency when issuing CONs that are evaluated and updated at least once every five years, developed by rule in accordance with the Uniform Administrative Procedures Act, and are based, in whole or in part, upon input the HSDA received during development of the criteria and standards from: the Division of TennCare, or its successor, the Department of Health (DOH), the Department of Mental Health and Substance Abuse Services (DMHSAS), the Department of Intellectual and Developmental Disabilities (DIDD), the Health and Welfare Committee of the Senate, and the Health Committee of the House of Representatives.

Requires HSDA to conduct studies related to healthcare including a needs assessment that must be updated at least annually. Requires HSDA to submit an annual report, no later than January 15 of each year, to the General Assembly, detailing a comparison of the actual payer mix and uncompensated care provided by CON holders with the projections the holders submitted in the holder's CON application.

Requires HSDA to submit a plan to merge the HSDA with the Board for Licensing Health Care Facilities, to the General Assembly by January 23, 2023.

Exempts mental health hospitals from CON regulations. Prevents health care institutions from: (1) adding beds of a category of service that they were not already providing; (2) redistributing beds to other facilities; and (3) establishing new beds at new satellite facilities.

Allows any hospital licensed under Title 33 or 68 to operate a non-residential substitution-based opioid treatment center if the program is certified by the DMHSAS and the federal Department

of Health and Human Services. Requires a county that, as of January 1, 2021, is designated as an economically distressed eligible county by the Department of Economic and Community Development, and has no actively licensed hospital located within the county is exempt from having to obtain a CON.

Requires a provider of positron emission tomography services or magnetic resonance imaging services be accredited by the Joint Commission or American College of Radiology within two years of the initiation of service. Exempts a home care organization that is limited to providing home health services to patients under the federal Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (42 U.S.C. § 7384, et seq.) from having to receive a CON.

Exempts a home care organization that is limited to providing home health services to patients under the care of a healthcare research institution from having to receive a CON. Requires the home care organization to be accredited by the Joint Commission, the Community Health Accreditation Partner, DNV GL Healthcare, or the Accreditation Commission for Health Care in order to qualify for the exception within 12 months of the date the home care organization is granted a license by the DOH.

Allows an initiation of magnetic resonance imaging services or increasing the number of magnetic resonance imaging machines used, as long as services are not provided to a patient who is 14 years of age or younger on more than five occasions per year or initiation of positron emission tomography in a county with a population in excess of 175,000 to be established or operate without a CON.

Allows the Commissioners of DOH, DMHSAS, and DIDD to submit written reports or statements and send representatives to testify before the agency with respect to applications.

Extends the prohibition on new nursing home beds, except for 125 Medicare skilled nursing facility beds, to June 30, 2025. Extends the period of time that a certificate of need (CON) is valid for nursing home projects from two years to three years.

Increases existing fees and establishes new fees for healthcare providers and requires HSDA to annually collect the fees. Requires fees be paid to the Treasurer and deposited in the General Fund and credited to the HSDA's separate account.

Authorizes a hospital closed for 15 years or less to resume operations without a CON in certain circumstances. Requires the party re-establishing a hospital to apply for a CON within 12 months of renewing its license with the DOH. Requires the DOH to review the license renewal application and to notify the applicant of its determination within 60 days.

Extends the termination date for the HSDA from June 30, 2021 to June 30, 2024. Extends the termination date for the Board of Licensing Health Care Facilities from June 30, 2023 to June 30, 2024. For purposes of rulemaking, takes effective upon becoming law. For all other purposes, takes effect October 1, 2021.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue –

Net Impact – \$937,000/FY21-22/Health Services Development Agency

Net Impact - \$1,249,300/FY22-23 and Subsequent Years/

**Health Services Development Agency
\$27,900/FY21-22/General Fund**

\$37,300/FY22-23 and Subsequent Years/General Fund

Decrease State Revenue – \$124,400/FY21-22/Department of Health

\$165,900/FY22-23 and Subsequent Years/

Department of Health

Forgone State Revenue – \$515,700/Each Year FY21-22 through FY24-25/

Nursing Home Assessment Trust Fund

Increase State Expenditures –

\$123,800/FY21-22/General Fund

\$165,000/FY22-23 and Subsequent Years/General Fund

\$296,300/FY21-22/Health Services Development Agency

\$368,000/FY22-23 and Subsequent Years/

Health Services Development Agency

State Expenditures –

Cost Avoidance - \$2,293,800/Each Year FY21-22 through FY24-25

Federal Expenditures –

Cost Avoidance - \$4,511,800/Each Year FY21-22 through FY24-25

Other Fiscal Impact – The Department of Health will reallocate resources and reclassify positions as needed to meet the initial requirements of the proposed legislation. The additional funds required by the department in future years to accommodate the reallocation of resources and meet the requirements of the proposed legislation are unquantifiable at this time.

Pursuant to Tenn. Code Ann. § 68-11-1623(b), the Health Services Development Agency (HSDA) is required to be self-sufficient. As of June 30, 2020, the HSDA's reserve fund balance was \$2,459,400. The HSDA may increase fees for other certificate of need applicants in the future, if necessary, to remain self-sufficient.

Assumptions for the bill as amended:

Department of Health

- The DOH collected \$165,875 in fees for licenses from healthcare providers used for purposes of supporting the state health planning division in FY19-20.
- The proposed legislation increases the fee schedule and redirects the revenue from the licensing fees to the HSDA.
- As a result, the DOH will experience a recurring decrease in state revenue estimated to be \$165,875 in FY22-23 and subsequent years.
- Due to the October 1, 2021 effective date, the decrease in state revenue to the DOH is estimated to be \$124,406 ($\$165,875 \times 75.0\%$) in FY21-22.
- The DOH will need additional resources to meet the requirements of the proposed legislation in an efficient and timely manner.
- In the short term, it is assumed the DOH will reallocate existing resources and reclassify positions as needed to meet the requirements of the bill.
- In out years, DOH will need additional funds and positions to accommodate for the reallocation of resources and continue to meet the requirements of the proposed legislation.
- An exact amount of resources and funds is unquantifiable due to a number of unknown factors as to how the proposed legislation will impact the state's health care facilities landscape and the timing of such impacts.

Health Services and Development Agency

- The recurring increase in state revenue to the HSDA due to increasing licensure fees for healthcare providers and transferring total fee proceeds to an HSDA account is estimated to be \$1,756,252.
- The HSDA will reduce the current CON application fees from \$5.75 per \$1,000 of project costs with a minimum of \$15,000 and a maximum of \$95,000 to \$2.25 per \$1,000 of project costs with a minimum of \$3,000 and a maximum of \$45,000.
- Under the current fee structure, the average CON fee collections from FY16-17 through FY18-19 were \$1,465,903.
- This amount represents a higher than typical average of collections; therefore, this analysis assumes this average is 30 percent higher than the projected amount to be collected.
- CON fee collections are estimated to be \$1,127,618 ($\$1,465,903 / 1.3$) in FY21-22 and subsequent years under current law.
- Using the reduced fee schedule that HSDA will adopt upon passage of this legislation, the average CON fee collections from FY16-17 through FY18-19 would have been \$571,864.
- Adjusting for the higher than average collections during that time-frame, CON fee collections, after the planned reduction in fees, are estimated to be \$439,895 ($\$571,864 / 1.3$).

- The elimination of certain CON project types will result in fewer applications being filed with HSDA. It is estimated the HSDA will experience an annual loss of \$180,810 in application fees based on the new fee schedule.
- The recurring decrease in state revenue associated with a reduction in CON fees is estimated to be \$506,913 (\$1,127,618 - \$439,895 - \$180,810).
- The total net increase in state revenue to the HSDA is estimated to be \$1,249,339 (\$1,756,252 - \$506,913) in FY22-23 and subsequent years. Due to the October 1, 2021 effective date, the net increase in state revenue to the HSDA is estimated to be \$937,004 (\$1,249,339 x 75.0%) in FY21-22.
- The HSDA cannot accommodate the proposed legislation within existing resources and will need to reclassify three existing positions and hire four new positions to accommodate the added requirements of the proposed legislation.
- The one-time increase in state expenditures is estimated to be \$20,292 for computer and work stations.
- The recurring increase in state expenditures is estimated to be \$368,003 (\$283,440 salaries + \$74,063 benefits + \$7,000 supplies + \$3,500 membership fees) in FY22-23 and subsequent years. Due to the October 1, 2021 effective date, the increase in state expenditures is estimated to be \$296,294 [(\$368,003 x 75.0%) + \$20,292] in FY21-22.

Department of Mental Health and Substance Abuse Services.

- The proposed legislation allows any hospital licensed under Title 33 or 68 to operate a non-residential substitution-based opioid treatment center if the program is certified by the DMHSAS and the federal Department of Health and Human Services (DHHS). The DMHSAS does not certify opioid treatment programs. They license the programs once they have received a CON from the HSDA and have been certified by the federal DHHS.
- The DMHSAS has been designated as the State Opioid Treatment Authority (SOTA) under federal law and is responsible for program oversight and clinical assistance of any such opioid treatment programs. The clinics are required to be surveyed at least twice a year to maintain licensure.
- The DMHSAS currently licenses 19 mental health hospitals and the DOH licenses 147.
- The DMHSAS currently licenses 14 non-residential office-based opiate treatment facilities. The licensure fee for these facilities is \$810.
- This analysis assumes a total of 152 [(19 mental health hospitals - 14 non-residential office-based opiate treatment facilities) + 147 DOH hospitals] facilities would be eligible to apply for licensure in order to operate an opioid treatment program.
- Assuming 30 percent or 46 (152 x 30.0%) hospitals will apply for licensure with DMHSAS to establish an opioid treatment program, the recurring increase in state revenue to the General Fund is estimated to be \$37,260 (46 hospitals x \$810) in FY22-23 and subsequent years. Due to the October 1, 2021 effective date, the increase in state revenue is estimated to be \$27,945 (\$37,260 x 75.0%) in FY21-22.
- The DMHSAS will require two additional clinical positions to maintain the current 20 facilities to one position.
- The recurring increase in state expenditures is estimated to be \$165,045 {[(\$47,616 salary + \$14,655 benefits) x 2 positions] + \$40,503 travel, supplies, computer, etc.} in

FY22-23 and subsequent years. Due to the October 1, 2021 effective date, the increase in state expenditures is estimated to be \$123,784 ($\$165,045 \times 75.0\%$) in FY21-22.

Division of TennCare

- The proposed legislation deletes Tenn. Code Ann. § 68-11-1621 which establishes criteria for issuance of CON for new nursing home beds regardless of site, including conversion of any beds to licensed nursing home beds.
- No CON requests have been denied under this section of code in several years; therefore, any fiscal impact is estimated to be not significant.
- Based on information provided by the Health Services and Development Agency (HSDA), extending the period of time a CON is valid for nursing home projects will not decrease the number of CONs issued; therefore, no significant impact to CON revenue or HSDA.
- Pursuant to Tenn. Code Ann. § 68-11-1622(a), the number of new nursing home beds for which certificates of need may be issued by the HSDA from June 30, 2016 to June 30, 2021 is limited to 125 beds. This will extend the current limitation for an additional four fiscal years.
- There is a potential annual bed growth of 100 beds for Medicaid eligible individuals if the provisions of the bill are not enacted.
- The nursing home assessment, enacted pursuant to Public Chapter 859 of 2014, is based on facilities paying on non-Medicare bed days. Medicare pays approximately 15 percent of the state's nursing home days; therefore, forgone revenue is based on potential growth of 85 beds [$100 \text{ beds} - (100 \text{ beds} \times 0.15)$] from which the state would collect assessment revenue in the absence of the proposed bill.
- According to the Division of TennCare, there are approximately 316 total facilities paying the following assessment rates:
 - 12 facilities, or approximately 4 percent, pay a daily rate of \$8.64 per licensed bed;
 - 32 facilities, or approximately 10 percent, pay a daily rate of \$10.37; and
 - 272 facilities, or approximately 86 percent, pay a daily rate of \$17.72.
- The state will forgo any increased revenue from the nursing home assessment. Applying these rates to the potential growth of 85 beds, the total forgone revenue in each year FY21-22 through FY24-25 is estimated to be \$515,691 based on the following amounts:
 - \$10,722 ($85 \text{ beds} \times 4.0\% \times \$8.64 \times 365 \text{ days}$);
 - \$32,173 ($85 \text{ beds} \times 10.0\% \times \$10.37 \times 365 \text{ days}$); and
 - \$472,796 ($85 \text{ beds} \times 86.0\% \times \$17.72 \times 365 \text{ days}$).
- The average nursing facility daily reimbursement rate is \$219.36 . TennCare will avoid an increase in expenditures estimated to be \$6,805,644 ($85 \text{ beds} \times \$219.36 \times 365 \text{ days}$).
- Of the \$6,805,644 in avoided costs, \$2,293,842 would be state funds at a rate of 33.705 percent and \$4,511,802 would be federal funds at a match rate of 66.295 percent in each year FY21-22 through FY24-25.
- The proposed legislation extends the moratorium for a period of four years. For purposes of this analysis, all rates are assumed to remain constant over this period of time

Total Fiscal Impact

- The net increase in state revenue to the HSDA is estimated to be \$937,004 in FY21-22 and \$1,249,339 in FY22-23 and subsequent years.
- The total increase in state revenue to the General Fund is estimated to be \$27,945 in FY21-22 and \$37,260 in FY22-23 and subsequent years.
- The total decrease in state revenue to the DOH is estimated to be \$124,406 in FY21-22 and \$165,875 in FY22-23 and subsequent years.
- The total forgone revenue to the Nursing Home Assessment Trust Fund is estimated to be \$515,691 in each FY21-22 through FY24-25.
- The total increase in state expenditures to the HSDA is estimated to be \$296,294 in FY21-22 and \$368,003 in FY22-23 and subsequent years.
- The total increase in state expenditures to the General Fund is estimated to be \$123,784 in FY21-22 and \$165,045 in FY22-23 and subsequent years.
- The total cost avoidance in state expenditures is estimated to be \$2,293,842 in each FY21-22 through FY24-25.
- The total cost avoidance in federal expenditures is estimated to be \$4,511,802 in each FY21-22 through FY24-25.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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